

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 2:11-cr-00070-RAJ
)	
)	
vs.)	Seattle, WA
)	
ROMAN V. SELEZNEV,)	
)	
Defendant.)	Jury Trial, Day 6
)	
)	August 22, 2016

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JUDGE RICHARD A. JONES
UNITED STATES DISTRICT COURT

APPEARANCES:

FOR THE PLAINTIFF: NORMAN McINTOSH BARBOSA
U.S. Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
norman.barbosa@usdoj.gov

C. SETH WILKINSON
U.S. Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271
seth.wilkinson@usdoj.gov

HAROLD W. CHUN
U.S. Department of Justice
1301 New York Avenue NW, Suite 600
Washington, DC 20005
harold.chun@usdoj.gov

1 FOR THE DEFENDANT: JOHN HENRY BROWNE
2 Law Office of John Henry Browne
3 108 South Washington Street, Suite 200
Seattle, WA 98104
johnhenry@jhblawyer.com

4 EMMA SCANLAN
5 Law Office of John Henry Browne
6 108 South Washington Street, Suite 200
Seattle, WA 98104
emma@jhblawyer.com

7
8 Andrea Ramirez, CRR, RPR
9 Official Court Reporter
United States District Court
10 Western District of Washington
700 Stewart Street, Suite 17205
11 Seattle, WA 98101
andrea_ramirez@wawd.uscourts.gov

12 Reported by stenotype, transcribed by computer
13

14
15
16
17
18
19
20
21
22
23
24
25

1 I N D E X

	Page No.
2	
3 Witness: CESARE JOHN SARETTO	
4 Direct Examination by Mr. Wilkinson	1147
4 Cross Examination by Mr. Browne	1159
5 Witness: BOB KERR	
6 Direct Examination by Mr. Chun	1164
7 Witness: CHRISTOPHER FORSYTHE	
8 Direct Examination by Mr. Barbosa	1170
8 Witness: DIANE COLE	
9 Direct Examination by Mr. Wilkinson	1180
9 Cross Examination by Mr. Browne	1184
10 Witness: JOE ANGELASTRI	
11 Direct Examination by Mr. Wilkinson	1187
11 Witness: MEGAN WOOD	
12 Direct Examination by Mr. Barbosa	1192
13 Cross Examination by Ms. Scanlan	1205
13 Redirect Examination by Mr. Barbosa	1211
14 Re-Cross Examination by Ms. Scanlan	1211

15

16 E X H I B I T S

17 Exhibit 15.17	1178
18 Exhibit 16.6	1203

19

20

21

22

23

24

25

USA vs. Seleznev, 8/22/16

1 THE CLERK: We are resuming our jury trial in the
2 matter of United States vs. Roman Seleznev, Cause
3 Number CR11-70, assigned to this court.

4 THE COURT: Good morning. Counsel, the parties
5 apparently want to talk to me about scheduling and also about
6 16.6.

7 So let's hear, first, about scheduling.

8 MR. WILKINSON: Your Honor, as I noted in my e-mail
9 to the Court yesterday, in getting ready for today's schedule,
10 we came to find that things -- we expect things to move very
11 quickly today. We also have one witness who is scheduled to
12 testify today who was injured, I think, on Friday, and so isn't
13 going to be able to make it today.

14 We had planned seven witnesses for today. We now have
15 six. I don't know that I've ever gotten through that many
16 witnesses in a day. But as we sat down yesterday and kind of
17 worked through it, we figured out that it really is going to
18 end early in the day. And our best expectation is that it
19 would end around the lunch hour. We have three other witnesses
20 who are unavailable today who are available tomorrow morning.

21 And so I guess we're asking the Court's indulgence, and
22 it's not something that we wanted to do, but to take a break in
23 the afternoon, after we complete this testimony, finish up our
24 case in the morning, and we'll still be on the schedule that
25 we'd originally anticipated, of resting tomorrow morning.

USA vs. Seleznev, 8/22/16

1 And I do want to say, we don't -- we understand that the
2 jury has to travel back and forth, and it's something we put a
3 lot of thought into. But things just broke in a way we didn't
4 expect this time.

5 THE COURT: Okay. All right. And counsel for the
6 defense, there's an issue regarding one of the exhibits?

7 MR. BROWNE: I'm sorry, Your Honor. I couldn't hear
8 you.

9 THE COURT: There's an issue regarding one of the
10 exhibits, or you do wish to --

11 MR. BROWNE: Well, actually, I do have an issue about
12 one of the exhibits, but I also have another matter that I can
13 talk about, briefly.

14 THE COURT: Sure.

15 MR. BROWNE: I believe the first witness this morning
16 is going to be CJ Saretto, who was the previous owner of the
17 Broadway Grill. And the memorandum of the interview that was
18 done with him indicates that, for instance, he paid \$15,000 for
19 a forensic analysis of his computer. He was not compliant --
20 if you recall, back -- way when the start of trial began, there
21 was some discussion about what's called PCI DSS, which is a
22 system you have in your computer so it can't be hacked; and
23 that if you don't have that, then Visa, or the banks, or
24 whoever, fines you. And so that also happened to him, that he
25 was fined.

USA vs. Seleznev, 8/22/16

1 And then he claims that there was press attention -- the
2 reason I'm telling you all this in advance, Your Honor, is so
3 it can make it clear is, I'm not sure it's relevant to anything
4 in the indictment that this gentleman -- I think it's relevant,
5 certainly, that he did not have the necessary software to
6 prevent the hacking, but I'm not sure it's relevant how much it
7 cost him for a forensic examination, and that he ultimately
8 closed his business and filed for bankruptcy. I could see how
9 that could be relevant at sentencing, but I don't see how that
10 would be relevant at trial, those matters.

11 THE COURT: Have you talked to the government to see
12 if they're going to solicit that type of testimony?

13 MR. BROWNE: Well, I assume they were, since they
14 gave us a memo to that extent.

15 MR. BARBOSA: We definitely will. And it's a
16 sentencing element of the crime that we are required to prove
17 to the jury in terms of the loss.

18 THE COURT: You need to speak in the microphone,
19 Counsel.

20 MR. BARBOSA: Your Honor, under 18 U.S.C. 1030, we
21 have to prove these losses to the jury as a sentencing element,
22 in order to make this a felony crime. I'm trying to turn to
23 the exact section -- 1030 defines loss --

24 THE COURT: Just one second, Counsel.

25 Which subsection, Counsel?

USA vs. Seleznev, 8/22/16

1 MR. BARBOSA: I'm looking for that right now, Your
2 Honor. It's a rather dense section. I apologize. Here we
3 are.

4 It is 1030(c)(2) -- sorry (c)(4)(A)(i), an offense under
5 subsection (a)(5)(B) which does not occur after a conviction
6 for another offense under this section, if the offense caused
7 loss to one or more persons during any one-year period, and for
8 purposes of an investigation, prosecution, or other proceeding
9 brought by the United States --

10 THE COURT: Counsel, Counsel --

11 MR. BROWNE: Too fast.

12 THE COURT: That's not going to work. You need to
13 start over again.

14 MR. BARBOSA: Loss to one or more persons during any
15 one-year period, aggregating at least \$5,000 in value.

16 So this is a sentencing factor that the government is
17 required to prove. And the term "loss" is defined later in the
18 statute, under (e)(10) -- or sorry, (e)(11). The term
19 "loss" --

20 THE COURT: Just a second, Counsel. Let me catch up
21 with you.

22 MR. BARBOSA: Certainly.

23 THE COURT: Okay. I'm with you.

24 MR. BARBOSA: Means any reasonable cost to any
25 victim, including the cost of responding to an offense,

USA vs. Seleznev, 8/22/16

1 conducting a damage assessment, and restoring data program,
2 system, or information to its condition prior to the offense,
3 and any revenue lost, cost incurred, or other consequential
4 damages incurred because of interruption of services.

5 In a 1030 case, it is simply beyond argument that this
6 type of testimony is inherently relevant to the charges in the
7 case.

8 THE COURT: Let me ask you this, Counsel. Is that a
9 sentencing factor, or is that a component of the element of
10 proof?

11 MR. BARBOSA: Your Honor, it's in the verdict form.
12 It's a factor that the jury must find in order to allow the
13 Court to sentence the defendant as a felony crime. Without a
14 special verdict on these, the crimes would be a misdemeanor.

15 THE COURT: All right. Mr. Browne?

16 MR. BROWNE: Your Honor, I just don't think that they
17 meet that for the threshold. And the proposed testimony, I
18 believe, based on the memorandum that they gave us -- for
19 instance, that he filed bankruptcy -- and there's also an
20 indication in this memorandum that one of his servers at the
21 restaurant was alleged to have actually copied credit card
22 numbers. And that was one of the reasons why the business sank
23 in the neighborhood, because that rumor was running around the
24 neighborhood. I just think that's much more prejudicial than
25 probative.

USA vs. Seleznev, 8/22/16

I think he could certainly testify that he bought the business -- apparently, he bought the business, and this software that was -- and hardware that was utilized was not up to par. He has a degree in computer science, this gentleman. And so he redid it, but he didn't do -- he wasn't compliant with the banks' requirements of the type of software that would prevent hacking. So that's what caused a lot of the financial damage to him. So I just -- I think it's more prejudicial than probative. I don't think it's necessary for the threshold the government needs to prove.

And I have another matter, once you rule on that, Your Honor.

MR. BARBOSA: Your Honor, and I'd just point out, this isn't a *Franke* (phonetic) issue. The government must prove this to the jury. To the extent defense would like to attempt to blame the victim argument, that he was at fault for this hack, that's something they can argue to the jury. I don't believe it would be very compelling. But it is not a factor that in any way excludes Mr. Saretto's testimony that this had an impact on his business.

THE COURT: And Counsel, do you believe that the filing of the bankruptcy is a necessary component of the definition of loss?

MR. BARBOSA: Other consequential damages incurred because of interruption of service is specifically included in

USA vs. Seleznev, 8/22/16

1 the definition of loss. The cost to him, as a result of the
2 damage to his business reputation, and the damage to his entire
3 business, are inherently part of the impact that the government
4 must establish.

5 MR. BROWNE: May I just briefly respond?

6 Your Honor, I believe the \$5,000 threshold that they're
7 talking about, to turn this into a felony, is the loss to the
8 banks and the credit card companies, under the statute and
9 under the indictment.

10 THE COURT: Where does it say that, counsel?

11 MR. BROWNE: I left the indictment in the other room.

12 May I have a minute?

13 THE COURT: Certainly.

14 MR. BARBOSA: And I would point out, that only
15 applies to the wire fraud affecting a financial institution.
16 We do have to establish the impact on financial institutions
17 for the wire fraud counts. The hacking charges, however, it
18 has to be aggregated loss to the computer hacking victims.

19 MR. BROWNE: May I just finish, Your Honor?

20 THE COURT: Yes.

21 MR. BROWNE: Your Honor, I believe -- and perhaps
22 I'm -- we should get you a copy of this memorandum, of the
23 interview. But I believe the collateral consequences of this,
24 the bankruptcy, so on and so forth -- we had another witness
25 coming up, maybe we want to talk about it now too, where -- who

USA vs. Seleznev, 8/22/16

1 claims to have had a lot of emotional problems and health
2 problems because of what happened to his business. And I'm --
3 so this is coming up -- will be coming up through some of these
4 victims. So I understand what the government is saying. I
5 don't think it's necessary, and I think it's more prejudicial
6 than probative.

7 THE COURT: All right. The Court has reviewed the
8 specific statutory language, and the Court doesn't find that
9 the defense objection is supported by the definitions as
10 provided in the statute. The Court agrees with the government
11 that these are necessary components that the government must
12 prove in order to establish the loss to the hacking victims.

13 There are two separate entities, the bank institutions and
14 the individual victims. We're talking about the individual
15 victims, and Mr. Saretto is testifying as an individual victim.
16 So for that component, that's a necessary element -- a
17 necessary component that the government must prove. The Court
18 believes that the type of loss, as you've defined it from the
19 memorandum, fits within the statutory definition.

20 Now, more prejudicial than probative, obviously, any type
21 of testimony that shows that there's a loss is going to be
22 prejudicial. But under the definition of 403, whether or not
23 it's substantially more prejudicial, the Court can't find that,
24 that under these circumstances, it would support exclusion of
25 the evidence. For those reasons, the Court will deny the

USA vs. Seleznev, 8/22/16

1 defense objection. The witness is permitted to testify.

2 And counsel for the government, with some direction to
3 you, the Court's going to permit you to have these witnesses
4 testify in these categories. But if it starts to go far afield
5 in terms of how far these losses are going, then the Court is
6 going to pull the reins back in and be much more restrictive.
7 Counsel is certainly entitled to interpose an objection, if
8 they believe it's going too far afield. He's identified
9 specific categories in his proffer to the Court. If it goes
10 far beyond that -- and again, I haven't seen this memorandum --
11 then the Court will possibly consider reconsidering how far I'm
12 going to let you go.

13 MR. BARBOSA: Understood, Your Honor.

14 THE COURT: All right. Now, there's another
15 individual, Counsel?

16 MR. BROWNE: There are more individuals who have that
17 sort of testimony. I will just deal with that on -- as they
18 testify, and make objections when I feel it's appropriate.

19 THE COURT: Okay.

20 MR. BROWNE: And I believe Ms. Scanlan has one other
21 matter.

22 THE COURT: All right. Thank you.

23 Ms. Scanlan? Ms. Scanlan, you can stay at counsel table
24 and make your argument.

25 MS. SCANLAN: Okay. It's just about -- the Court

USA vs. Seleznev, 8/22/16

1 came out and indicated we were going to talk about Summary
2 Exhibit 16.6.

3 THE COURT: Correct.

4 MS. SCANLAN: So my concern is that the government
5 has indicated, in their briefs regarding this issue, that they
6 would like to establish the foundation for this exhibit with
7 Ms. Wood on the stand, in front of the jury. And my concern is
8 that the amount of testimony it's going to take to get to the
9 point of establishing a foundation for that exhibit is such
10 that, even if the Court decided to sustain the defense
11 objection to the exhibit, that it's not a proper summary
12 exhibit, because it's not based on records that are kept in the
13 ordinary course of business, at that point the jury will have
14 known so much about the alleged loss amount, and all of the
15 underlying records and victims that go with that, that the
16 prejudice of that exhibit is already out, without the exhibit
17 being admitted.

18 So I would ask that the government establish the
19 foundation for that exhibit outside the presence of the jury.

20 THE COURT: And when is this witness expected to
21 testify?

22 MR. BARBOSA: Probably late this morning.

23 Your Honor, I will say, I do not plan to ask Ms. Wood a
24 great deal of questions about the foundation for the underlying
25 records, because that would be cumulative of the other

USA vs. Seleznev, 8/22/16

1 testimony that's already been established. Detective Dunn
2 established the business records foundation for the underlying
3 records without any objection or cross examination as to those
4 records. He testified at length about how credit card
5 companies, credit card brands, collect the type of information
6 that Ms. Wood analyzed. He testified at length about how they
7 are required to report -- how banks are required to report data
8 on unauthorized charges to the card brands. He explained how
9 the card brands and regulations require this type of data to be
10 collected; that they maintain this and collect it in the
11 ordinary course of business. He explained how they go about
12 using that data to examine fraud trends; properly allocate
13 charges between merchants, cardholders, banks, and others; and
14 to assess fines, like the ones that some of these merchants
15 have suffered.

16 Ms. Wood will testify about receiving the information from
17 the card brands and how she went about analyzing it. I don't
18 think that testimony is in any way unnecessarily prejudicial.
19 And the other testimony, in terms of where the government
20 obtained the card numbers that were submitted to the card
21 brands, that has also already come in without objection or
22 cross examination. The agents, Dunn, Fischlin, and Mills, all
23 testified at length about how they submitted numbers found on
24 the servers and the defendant's laptop and some of the victim
25 machines to the card brands, and then passed on that loss

USA vs. Seleznev, 8/22/16

1 information.

2 So, frankly, I think we have already established a
3 foundation without objection, and Ms. Wood can proceed with
4 introducing -- or beginning to explain her analysis of the
5 numbers.

6 MS. SCANLAN: May I?

7 THE COURT: Yes.

8 MS. SCANLAN: It's true that we haven't objected to
9 Detective Dunn's generalized testimony that he collected credit
10 card numbers and sent them to financial institutions, and also
11 to card issuers. He offered a very generalized level of
12 testimony about what he did to supply that information. And
13 then he offered generalized testimony about what card issuers
14 and financial institutions do when there's fraud reported. He
15 has not laid a foundation for the underlying records that were
16 created by the financial institutions and the card issuers.

17 Many of those records, for instance, the records from
18 Capital One, these are not raw account records for each
19 fraudulent or alleged-to-be-fraudulent transaction. It is a
20 summary Excel exhibit that's created in a report format in
21 response to a subpoena. It may be based on transaction fraud
22 records that are created for another purpose, but the record
23 that Ms. Wood's testimony relies on is not a business record.
24 It's created for litigation. That's the thing that I think
25 they need to establish beforehand, is that these actual records

USA vs. Seleznev, 8/22/16

1 are records kept in the ordinary course of business. And
2 nobody has done that up to this point.

3 THE COURT: Have you interviewed Ms. Wood, Counsel?

4 MS. SCANLAN: No.

5 THE COURT: Have you seen any reports of how these
6 records were amassed or assembled?

7 MS. SCANLAN: Yes.

8 THE COURT: Which records have you reviewed?

9 MS. SCANLAN: So I believe the government filed much
10 of our correspondence regarding this exhibit with their brief
11 regarding this issue, which outlines some of it.

12 But, for example -- and I have all of these -- we reviewed
13 the records supplied by Chase Bank; the Broadway Grill CPP
14 file; the Navy FCU files; the MasterCard -- what's called the
15 MasterCard raw data response, which is interesting in and of
16 itself, because these are not -- and this is what all of that
17 communication goes to, that's actually filed in the record.
18 These are not the underlying account records. These are
19 summations that are created by financial institutions.

20 So there were multiple requests by the defense for what
21 records underlie these exhibits, and those have not been
22 produced. So this is what's considered the raw record. And
23 our position is that these are not records kept in the ordinary
24 course of business.

25 THE COURT: Okay.

USA vs. Seleznev, 8/22/16

1 MR. BARBOSA: May I respond, Your Honor?

2 THE COURT: Yes.

3 MR. BARBOSA: Detective Dunn did go into the details
4 of how the card brands maintain those records, at length. And
5 I point out, first, several of the records that Ms. Scanlan
6 just referenced are not the underlying records. And we have
7 repeatedly explained that to defense counsel. Records directly
8 from the banks are not the source of this summary exhibit, only
9 records provided by the card brands. And the card brands, as
10 Detective Dunn explained, have these records because they
11 receive it from the banks, which becomes their business record,
12 unquestionably. It's kind of beyond any dispute that credit
13 card brands would maintain this kind of data.

14 What Ms. Scanlan's objection goes to is that the format of
15 how they produced their business records is something she does
16 not agree with. Effectively, I think a good analogy would be,
17 if you looked at the Court's docket as a business record of
18 what happened in a particular case, Ms. Scanlan's objection is
19 that you couldn't use that to show what happened unless you
20 admit every underlying pleading.

21 The card brands did not provide us with every receipt that
22 was signed or typed up at a particular merchant, to support the
23 credit card charges. What they provided us was their
24 databases, their Excel spreadsheets. And Detective Dunn
25 testified about that. They provided their Excel spreadsheets

USA vs. Seleznev, 8/22/16

1 that record all this information. Not surprising that in this
2 day and age, with this volume of data, these massive
3 corporations would not retain every shred of paper that is
4 recorded in their business records.

5 THE COURT: And Counsel, is there any dispute, or is
6 there any issue regarding the fact that this type of data was
7 kept in the ordinary course of business?

8 MR. BARBOSA: There just isn't. Detective Dunn has
9 already testified about that. And he's unquestionably a
10 qualified witness. He is not only extraordinarily experienced
11 based on his law enforcement experience, as he testified, he
12 was also employed by one of the largest financial services
13 companies providing back-end support, this very type of data
14 analysis and retention that the card brands are doing.

15 THE COURT: All right. Anything further? If there's
16 nothing further?

17 MS. SCANLAN: I'm sorry, Your Honor. If I may?

18 THE COURT: Yes.

19 MS. SCANLAN: I think perhaps it would be helpful,
20 just before the Court makes a decision, to actually look at
21 what the record is that's produced by the card issuer.

22 So these are the MasterCard raw data records. So when you
23 look at this -- and this is not -- and to go back to Detective
24 Dunn, Detective Dunn did not testify specifically about what
25 was done by card issuers in this case, for these records. He

USA vs. Seleznev, 8/22/16

1 offered a generalized level of testimony about what card
2 issuers do. And that's not the same thing.

3 This record, which is the raw data record for MasterCard,
4 is not a record kept in the ordinary course of business in
5 terms of the account records for the transactions. This is a
6 report. I would also indicate that --

7 THE COURT: And, Counsel, where would the source of
8 this data come from in order to generate this type of report?

9 MS. SCANLAN: As I understand it, the source of this
10 data is -- well, Detective Dunn -- it's always been
11 communicated to us, and it's been the understanding, that
12 Detective Dunn sent the credit card numbers to the card issuers
13 and the financial institutions. Now, he testified to something
14 which is quite different, which is that he sent them the common
15 point-of-sale and asked for the records connected to that
16 business. That is a whole different thing than sending them
17 the credit card numbers. So I don't know if he did both, or
18 one or the other of those.

19 My understanding of what the underlying records for this
20 is is the consumer fraud reports. So an individual account
21 holder -- that's how you'd figure out what this common source
22 is. They flag, or the financial institution flags, a
23 fraudulent transaction on a particular account holder's card.
24 If all of those people's fraudulent transactions, they all went
25 to the Broadway Grill a week prior, then that becomes flagged

USA vs. Seleznev, 8/22/16

1 as a potential source of the taking of those credit card
2 numbers. So those are the records underlying this report. But
3 those records aren't produced to back this up. It's just this.
4 So this is not the same thing as those underlying business
5 records.

6 I would also say, in terms of having Ms. Wood introduce
7 that exhibit, that summary exhibit has loss amounts from an
8 untold number of businesses that have not been testified about.
9 There are probably 200 individual businesses that underlie
10 those loss amounts. And no one has testified about the
11 consumers who may have used a credit card there, who later had
12 fraudulent transactions. So the --

13 THE COURT: Doesn't that go more, Counsel, to weight,
14 as opposed to admissibility, in that that's a subject that's
15 more proper for cross examination, as opposed to exclusion or
16 preclusion of evidence?

17 MS. SCANLAN: I think it can. Parts of that go to
18 weight. But part of it goes to just the actual foundation
19 threshold relevance of a lot of that information.

20 If you haven't established in the forefront that these
21 loss amounts have anything to do with this case, then why
22 should that information come in front of the jury? Why should
23 they be told that it's \$170 million in loss when they haven't
24 been told anything about any of those businesses? I mean, I
25 don't see why you get to just introduce that without anything

USA vs. Seleznev, 8/22/16

1 that's supporting it.

2 THE COURT: Okay. Thank you, Counsel.

3 MR. BARBOSA: Your Honor, I want to correct a couple
4 things, because that record is very inconsistent with what is
5 actually happening and what has actually already been
6 established in the testimony.

7 Detective Dunn explained very clearly -- and I know there
8 was a lot of testimony, but I'm the one that outlined it and
9 brought it out through him. He explained that he submitted
10 both the numbers that he seized, and he also told the card
11 brands what were the common points of purchase. The card
12 brands returned information based specifically on the numbers
13 that were found in the defendant's possession on the HopOne
14 server, the 2Pac server, the Ukraine server, and his laptop.
15 They returned additional information that did not tie back to
16 specific numbers found in defendant's custody.

17 That will not, and is not, part of the summary. That --
18 all of that loss, if not tied directly to a number in
19 defendant's possession, has been excluded from the chart, from
20 the summary. That equaled another \$27 million, but it is not
21 part of the \$169 million summary. I just wanted that to be
22 very clear because -- especially for the appellate record. We
23 are not submitting loss figures that do not have a clear,
24 direct tie to the defendant.

25 THE COURT: All right. The Court's going to rule as

USA vs. Seleznev, 8/22/16

1 follows.

2 The Court is not convinced that the defense has
3 established a sufficient basis to exclude this type of
4 testimony. I think the Court's already indicated to counsel
5 that much of the objection goes to weight, as opposed to
6 admissibility.

7 The Court also looks at the fact that the government has
8 carved out, from the offering in Exhibit 16.6, that component
9 that's not directly tied to the defendant's laptop and computer
10 when seized. The Court is satisfied that if there was any
11 prejudice, it would be as a result of the -- what the
12 government's characterized as 27,000 additional -- a
13 significant amount of money that would have been added, but it
14 was excluded based upon what's not tied directly to the
15 defendant's computer.

16 The Court is, therefore, satisfied that Detective Dunn has
17 established a sufficient foundation to what was sent to the
18 banks, what was provided to the banks -- provided by the banks
19 is tied directly to the defendant's conduct, based upon the
20 evidence that's presented.

21 So the Court will deny the defendant's objection. The
22 government's permitted to use 16.6 as proposed.

23 Anything else to take up before we bring in the jury?

24 MS. SCANLAN: Your Honor, I would ask that the
25 MasterCard records that I handed forward be kept in the record

USA vs. Seleznev, 8/22/16

1 as a sealed exhibit, due to the nature of the information
2 that's throughout that record.

3 THE COURT: That's fine. Let me check, Counsel.

4 Are there -- I saw that there were amounts --

5 MR. BARBOSA: I should point out, also, for the
6 record, that this is not the basis of the summary. This
7 appears to be a summary itself. The summary document is based
8 on the actual card-by-card transaction records. And this is
9 simply MasterCard's own summary.

10 THE COURT: Okay. Again, the basis of the Court's
11 ruling was based upon what was directly tied to individuals, as
12 opposed to what counsel has proposed by way of MasterCard.

13 But, nonetheless, I will permit this to be a part of the
14 record, if defense needs to make this a part of the record. So
15 we'll have this marked for identification as Government's
16 Exhibit --

17 MR. BARBOSA: Defense exhibit.

18 THE COURT: Defense Exhibit 113. And it will be
19 filed under seal.

20 And these are MasterCard records; correct?

21 MS. SCANLAN: Yes, Your Honor.

22 THE COURT: Counsel, just so that we're clear, our
23 record doesn't go up to the reviewing court. Exhibits are
24 returned back to counsel. The reason I had it marked for
25 identification was so that we preserve the record of what you

USA vs. Seleznev, 8/22/16

1 presented to the Court. So even though it's filed under seal,
2 that's only on a temporary basis. Because once the trial is
3 over, I expect the government to come collect all their
4 exhibits, and I expect the defense to collect their exhibits.
5 So if there is an appeal, then it's up to you to determine what
6 you want to submit for the record. I just don't want to
7 mislead anybody in terms of what we're holding on to and what
8 we're going to keep.

9 MS. SCANLAN: I got it. Thank you.

10 THE COURT: Anything else to take up before we bring
11 in the jury?

12 MR. BARBOSA: Nothing from the government, Your
13 Honor.

14 THE COURT: From the defense?

15 MS. SCANLAN: No.

16 THE COURT: Okay. Let's bring in the jury.
17 Thank you, Counsel, for taking care of that before the
18 jury comes in.

19 (Jury enters the courtroom)

20 THE COURT: Good morning. And I'd like to welcome
21 all of you back to court and thank you for your continued
22 support in being able to assist the parties in their resolution
23 of the issues now before you.

24 I also want you to know that we started exactly at 9:00.
25 We had some issues that we had to deal with. Because I don't

SARETTO - Direct (by Mr. Wilkinson)

1 think that you should believe that we were out here just
2 exchanging social pleasantries for the last half hour. When
3 you're in there, we're out here working. That's what we have
4 been doing so it makes it more efficient of your time so that
5 you don't have to go in and out multiple times. So we covered
6 several different issues and several different witnesses'
7 testimony. And that's all been resolved now. So as the
8 testimony comes in, hopefully you won't have to be excused.

9 So with that, Counsel, please call your next witness.

10 MR. WILKINSON: The United States calls CJ Saretto.

11 THE COURT: Please step forward, sir.

12 THE CLERK: Please step forward.

13 CESARE JOHN SARETTO, having been duly sworn, was examined
14 and testified as follows:

15 THE CLERK: Please state your first and last names,
16 and spell your last name for the record.

17 THE WITNESS: Cesare John Saretto. Last name is
18 S-A-R-E-T-T-O.

19 THE COURT: You may inquire.

20 MR. WILKINSON: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. WILKINSON

23 Q Good morning, Mr. Saretto.

24 A Good morning.

25 Q Can you tell us what you do for a living, presently?

SARETTO - Direct (by Mr. Wilkinson)

1 A I'm the vice president of program management for a
2 software technology firm called Change Healthcare.

3 Q And where is that located?

4 A Our headquarters is in Nashville, Tennessee. We're a
5 U.S.-based firm, so offices everywhere.

6 Q Do you live in Nashville?

7 A I do, yes, sir.

8 Q Do you hold any degrees in computer-related fields?

9 A I do. I have a master's and a bachelor's in computer
10 science.

11 Q Where did you live before you lived in Tennessee?

12 A I lived here in Seattle for 14 years.

13 Q And what was your primary employment while you lived here?

14 A I worked at Microsoft Corporation for the entirety of the
15 14 years. When I left, I was a group program manager working
16 on video games.

17 Q Were you also a small business owner?

18 A I was, for three years.

19 Q And what was the name of the business?

20 A The Broadway Grill, on Capitol Hill.

21 Q When did you purchase Broadway Grill?

22 A We purchased and took possession June 1 of 2010, I
23 believe.

24 Q And at the time you purchased the business, how long had
25 Broadway Grill been operating?

SARETTO - Direct (by Mr. Wilkinson)

1 A I'm not sure of the exact count, but we're looking at
2 something along 20 years or so.

3 Q You mentioned it was on Capitol Hill; is that right?

4 A Yes, sir, Broadway and Thomas.

5 Q What kind of food did it serve?

6 A Sort of American fare, steaks, hamburgers, french fries,
7 fried chicken, fusion.

8 Q How many employees did you have?

9 A We averaged about fifty-ish employees on payroll at a
10 time.

11 Q Did you accept payment by credit card?

12 A Yes, all major credit cards.

13 Q And about -- can you give us a sense of about how many
14 credit cards you'd process a day, as a business?

15 A It's hard to say; in the hundreds, less than a thousand.

16 Q Did you have a point-of-sale system that allowed you to
17 process them?

18 A We did, a restaurant manager point-of-sale system.

19 Q Now, you mentioned that you have a background in
20 computers.

21 Did your expertise include point-of-sale systems?

22 A It did not. I know an awful lot about point-of-sale
23 systems today. But when I took control of the restaurant, no,
24 sir, I did not have any idea.

25 Q Did you hire a company to help you out when maintenance or

SARETTO - Direct (by Mr. Wilkinson)

1 service problems came up?

2 A The system came with the restaurant. And there was a
3 company called Applied SBC, which is a local company. That is
4 the retailer of a system called Restaurant Manager, which is
5 the point-of-sale system that we used. And so that
6 relationship was in place when we took control of the business,
7 and they maintained the system for us.

8 Q And when you say that they maintained it, would they
9 always come on site when something needed to be done, or did
10 they sometimes access the computer from off site?

11 A I actually never met the guy. His name is Sam Gillis.
12 But we've only corresponded in e-mail. And he remotely
13 administered the system.

14 Q So did that mean that you had a remote desktop capability
15 that allowed him to remote in?

16 A Yes. He would remote desktop into the machine and control
17 it that way.

18 Q You mentioned that when you bought the business, it came
19 with the point-of-sale system, that you sort of took it over.

20 At the time you purchased the business, did you have
21 reservations at all about the system?

22 A Well, the front-of-house system -- if you've ever had
23 experience with a point-of-sale system, you know that they're
24 just touchscreens. You touch them, stuff happens, you order
25 items off menus. It looked fairly modern. I didn't have any

SARETTO - Direct (by Mr. Wilkinson)

reservations about it.

However, once we took control of the business, once I saw the back-office system, it looked like it was a decade old. Couldn't, kind of, get the business intelligence I wanted; very difficult to run reports. So I just thought there has to be a newer version of this thing. I found out I was maybe three major versions behind. So I called Sam, and I asked him to give me a quote for an upgrade. That was probably within the first, I don't know, three or four weeks of operation.

Q And did that upgrade happen before October of 2010?

A No, it didn't. It's sort of amazing. If you're not buying a new system, I guess maybe they're not so incented [sic] to get back to you about things like that. But once we were breached, he was real quick to respond and get that upgrade in place.

Q So you just mentioned you got breached. Let's move along to that. Let's focus on the period of October 2010, now.

A Okay.

Q Did you learn, during that period of time, that you had been breached?

A I did learn -- I believe it was -- I can't remember the exact date. Sometime in early-ish October, I received a phone call from Chase Paymentech, who's our merchant card processor. And they informed us --

MR. BROWNE: Objection, Your Honor. Hearsay.

SARETTO - Direct (by Mr. Wilkinson)

1 THE COURT: That's sustained, Counsel.

2 BY MR. WILKINSON

3 Q Did you know, after speaking with Chase Paymentech, that
4 you had been breached?

5 A I believed that we had been breached.

6 Q Did you do anything to investigate whether you had been
7 breached?

8 A Yes, actually, quite immediately. I was at work that day,
9 at Microsoft. I left work, because the restaurant was not
10 going to be able to function if we didn't switch over to using
11 modems to process credit cards. Now, that's a complicated
12 situation in the 21st century. But we had been instructed by
13 our merchant processor that we needed to get the machine off
14 the internet. So we air-gapped it, and that's what we did.
15 And I went to Staples and bought a modem, which is actually
16 kind of a hard thing to do; installed it in the server, spent
17 the day trying to get credit card processing back online.

18 Q Were you able to get it back online?

19 A Yes, at a snail's pace. So it's a fairly large
20 restaurant, seated 250-ish people at maximum capacity; so five
21 terminals and a bar, right, all these people trying to ring
22 things in. You can imagine, every time someone swipes the
23 card, the computer in the back office is making that wailing
24 modem sound, that we remember from the '90s. It was very
25 difficult to do business as a result of that.

SARETTO - Direct (by Mr. Wilkinson)

1 Q During that period when you were still operating on the
2 modem, were there any particularly important events for your
3 business?

4 A Yes, actually, there were. The Broadway Grill was known
5 for its Halloween costume contest. That seems like a strange
6 thing to be talking about, but that was the thing that we did
7 every year. And it was the second-busiest day in terms of
8 volume, dollar volume, that we would experience in a year. The
9 other one was Pride Sunday. So that was a very difficult
10 operation to actually run on a modem. It actually turned into
11 major chaos for us.

12 Q So we talked about how you converted over to the modem.

13 Did you also look at your own existing point-of-sale
14 system to determine what had happened?

15 A Yes. Law enforcement had asked us not to modify the
16 system in any way, to tamper with any forensic evidence,
17 because they wanted to come take images of the machines. So I
18 realized, after Halloween, we could not continue to operate in
19 this archaic model where we only had one telephone line to
20 process credit cards.

21 So myself and my minority owner, a friend of mine, also a
22 Microsoft employee, basically took it upon ourselves to do our
23 own, sort of, forensic analysis. So we brought in a piece of
24 network gear that allowed us to isolate the back-office server
25 from the internet so that it appeared to be on the internet,

SARETTO - Direct (by Mr. Wilkinson)

1 but it could only actually talk to our merchant processor. And
2 that was the only thing it could talk to. That allowed us to
3 restore internet connectivity and to start sniffing packets of
4 what it was doing.

5 And what we discovered was that every time a credit card
6 was run through a terminal in the front-of-house, that track
7 data from the card, all of the Track 1 and Track 2 on the back
8 of the card that you would need to make a counterfeit copy of
9 the card, was being transmitted to a server in the Ukraine, or
10 at least the IP address was a registered IP in the Ukraine.

11 Q Was there anything -- as part of your review of the
12 system, did you notice anything unusual about the way the
13 system was configured, the point-of-sale system was configured?

14 A Yes, we did. After we noticed that there was something
15 sending data, we very quickly isolated the Trojan that was on
16 the system, that was actually doing the sending. As I
17 mentioned, we stopped the computer from actually being able to
18 send to the Russian -- or, I'm sorry -- the Ukrainian address.
19 So none of the transmissions were making it through. They were
20 being caught by our network device. But we were then able to
21 take a look at what on the local system was sending that data.
22 We installed some debugging tools and found a Trojan that was
23 sending data out. We were able to disable that Trojan so that
24 it couldn't continue to operate, and leave it around for the
25 forensics.

SARETTO - Direct (by Mr. Wilkinson)

1 We also, in the process, discovered that there was a plain
2 text file sitting on the server itself. And that plain text
3 file had every credit card full magnetic stripe that had run
4 through that business for the preceding two years. The
5 point-of-sale vendor, or somebody -- I have no idea who -- two
6 years prior had rebuilt the back-office server, and at that
7 time had turned on a debugging switch that allowed the system
8 to do this very dangerous thing of just writing all these
9 credit cards to a plain text file. And we would later learn,
10 through the forensics reports, that, indeed, that that file was
11 sent outbound when the system was compromised in early October.

12 So in addition to taking every credit card that came
13 through, the hacker who had originally compromised the system
14 was able to gain a very large treasure trove of credit card
15 numbers, magnetic stripe data, as soon as he breached the
16 system.

17 Q Do you know how many card numbers were in that particular
18 file?

19 A It was north of 30,000. I don't remember the specific
20 number. I can tell you mine were included, because I was a
21 customer before I was the owner.

22 Q As a consequence of the breach, were you required to
23 participate in any kind of audit?

24 A Yes, two. The actual law enforcement officers, Secret
25 Service and Seattle Police, showed up with the black vans and

SARETTO - Direct (by Mr. Wilkinson)

1 black cases. And they shut us down for a day and imaged all of
2 our machines, took copies of our stuff, and left and turned
3 everything back on. We were also required to undergo a PCI DSS
4 audit and certification.

5 Q What is -- you said "PSI" or "PCI"?

6 A PCI, Payment Card Industry -- and I couldn't tell you what
7 "DSS" means.

8 Q But what did the audit involve?

9 A We had to hire a forensic firm. SecurityMetrics is the
10 one that we selected. So we were given a sheet of approved
11 firms, by Paymentech, who's our merchant processor, or was our
12 merchant processor. And we were told, "You need to pick one of
13 the folks on this list, and they need to come in and do a full
14 scan and audit of your systems. And then you need to go
15 through a compliance certification program, to prove that your
16 system is fully secure. And then after you've gone through
17 that, and you've proved that to us, and Visa, MasterCard,
18 American Express, and Discover, we'll decide how much we're
19 going to fine you. And we'll also decide whether or not we'll
20 let you continue to process credit cards."

21 Q Who paid the cost of that, of all those procedures?

22 A That would be me.

23 Q And how much did it cost to go through that process?

24 A Somewhere in the order of \$12,000 to \$13,000.

25 Q You just mentioned a minute ago that they would -- based

SARETTO - Direct (by Mr. Wilkinson)

1 on that, they would decide how much you would be fined.

2 Were you required to pay fines?

3 A We were. Visa levied a fine of \$5,000. MasterCard levied
4 a fine of another \$2,500. AmEx and Discover, I guess through
5 the goodness of their heart, decided we'd been beat up enough
6 and didn't actually fine us.

7 Q Before this breach, was Broadway Grill profitable?

8 A Yes. The business was profitable. It was -- we had
9 purchased it as an existing business, and we knew it was a
10 little bit of a turnaround, because it wasn't as profitable as
11 it had been in years past. But it was a healthy, profitable
12 business.

13 Q And how long had you been running the business before the
14 breach happened?

15 A I believe it was about four months.

16 Q Was the breach reported in the press?

17 A Very heavily, yes.

18 Q And describe, generally, how it was reported.

19 MR. BROWNE: Excuse me, Your Honor. I believe that
20 would be hearsay.

21 MR. WILKINSON: Your Honor, it's not offered for its
22 truth. It's to show the effect of the breach.

23 THE COURT: That's sustained, Counsel.

24 Next question?

25 ////

SARETTO - Direct (by Mr. Wilkinson)

1 BY MR. WILKINSON

2 Q Can you describe how the incident affected your
3 relationships with your customers?

4 A A lot of our customers didn't trust us. This was before
5 Target and Wal-Mart -- or sorry -- Target and Home Depot had
6 had their major breaches. So I don't think folks understood
7 that a trustworthy business could be compromised. There were a
8 lot of folks who were coming in who were very upset. Being a
9 neighborhood restaurant that has a very approachable price
10 point, it wasn't like all of our customers were, you know,
11 charging it up on their platinum AmEx. A lot of them were
12 using debit cards. A lot of them lost access to the balance of
13 their checking accounts. So there were some pretty angry folks
14 hitting us up, and the two banks kitty-corner to us, where most
15 of the folks -- a lot of our customers did business and banked.

16 Q Did you see an effect on your sales after the breach?

17 A Instantaneous, once it hit the news, in a very serious
18 way. We saw somewhere on the order of 40 percent reduction in
19 gross revenue, pretty heavily, after the media picked it up.

20 Q How did that affect your bottom-line profitability?

21 A Restaurants run about 11 to 15 percent profitability.

22 Your large chains can do better than that. But local small
23 businesses, that's about normal, industry average. You take
24 40 percent of revenue out for a little while, and, you know,
25 you're running pretty healthily in the red for quite a

SARETTO - Cross (by Mr. Browne)

1 significant point of time. And that resulted in sort of a
2 spiral for us. So we just injected a bunch of capital into the
3 business, and then the business immediately goes red, and
4 stayed red for a long time.

5 Q Was the business ever profitable again, after the breach?

6 A No. It sort of just resulted in, like, a spiral. And
7 after keeping the business on life-support for about
8 two-and-a-half years after that, we just called it quits.

9 Q And what do you mean by "called it quits"?

10 A Walked away from the business, shuttered the doors, walked
11 away from the loan obligations, filed personal bankruptcies.
12 It was pretty devastating, actually.

13 MR. WILKINSON: No further questions for this
14 witness.

15 THE COURT: Cross examination?

16 MR. BROWNE: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. BROWNE

19 Q Good morning.

20 A Good morning, sir.

21 Q A couple -- not a lot of questions; all right?

22 When you purchased the business, it had been ongoing for
23 about ten years?

24 A I believe longer than that, sir.

25 Q Okay. And so when you purchased the business, you also

SARETTO - Cross (by Mr. Browne)

1 purchased the hardware and the software, computer-wise;
2 correct?

3 A Correct. Yes, sir.

4 Q And so the previous owners had not installed a PCI DSS
5 system?

6 A I couldn't say what the previous owners had done. They --
7 I can tell you that, when I purchased the restaurant, the
8 version of the point-of-sale software was no longer considered
9 PCI compliant. PCI changes the rules -- as an industry,
10 changes the rules on a regular basis, enforcing higher and
11 higher security standards. And the system, as it stood when we
12 purchased it, it turned out was not PCI compliant. But that
13 wasn't something that I -- I didn't even know the acronym at
14 the time we purchased the restaurant. So that wasn't something
15 I knew. I found out.

16 Q And just to recap, PCI compliant means that there is
17 software installed in a back-room server, or sometimes even on
18 a point-of-sale server, but this software that's installed,
19 that prevents hacking, basically; correct?

20 A No, sir. It doesn't prevent hacking.

21 Q What -- I'm sorry. Go ahead. I interrupted you.

22 A That's okay. It employs a baseline of security
23 configuration that's considered acceptable from a security risk
24 mitigation perspective. There's no such thing as preventing
25 hacking.

SARETTO - Cross (by Mr. Browne)

1 Q Okay. So the banks and the credit card companies require
2 this PCI DSS in order to do business with you, basically;
3 right?

4 A They should require that you are processing transactions
5 using a PCI-certified point-of-sale system software. That's
6 correct.

7 Q And when the banks, or credit card companies, I guess,
8 determined that you weren't compliant, then there's fines
9 involved; right?

10 A No. Only if you're breached, there's fines involved.

11 Q Okay. Well, if you're breached, and they find that you're
12 not PCI compliant, then there could be fines?

13 A Yes, that's correct.

14 Q And in your case, that occurred.

15 And do you know -- I think you testified -- that the
16 credit cards that the Broadway Grill exported happened before
17 you owned it, also; correct?

18 A The credit cards that would be exported in October of 2010
19 had been collected over a period of -- I don't remember the
20 exact dates, but something like two years --

21 Q Yeah.

22 A -- correct. So they had been building up prior to our
23 purchase of the business. That's correct.

24 Q Right. And I think you did testify to that on direct. I
25 apologize for asking you again.

SARETTO - Cross (by Mr. Browne)

1 Now, interestingly, you were a customer at Broadway Grill
2 before you bought it?

3 A Correct.

4 Q And you used a credit card?

5 A I did. I used multiple of my own credit cards.

6 Q And you found those when you were looking at what cards
7 were compromised?

8 A Yes, I did find them in the log.

9 Q I'm just curious, did you get notice from your bank that
10 your credit card had been compromised?

11 A I definitely did on at least one of the cards. My
12 personal American Express was canceled and reissued as a result
13 of -- they don't always tell you. I don't remember what they
14 wrote in the letter. But I remember that they canceled it and
15 reissued it not long after the breach.

16 Q So as normal, the loss there was to American Express, not
17 to you personally, except for the hassle of getting a new card;
18 right?

19 A In the case of the loss to me, the credit card holder?

20 Q Yes.

21 A Yes, that loss was borne by American Express.

22 Q And you don't know if the person who installed the malware
23 is the person who took the entire credit card numbers. You
24 don't know that, that it's the same person or entity.

25 A I do not have any evidence to confirm that. The report

SARETTO - Cross (by Mr. Browne)

1 that was done by SecurityMetrics did confirm that. I do not
2 have -- I was not the one who did that forensics to make that
3 connection.

4 Q Okay. And what was the name of that company, again?

5 A SecurityMetrics did the forensic assessment, and also
6 the -- I believe the law enforcement did their own assessment.

7 MR. BROWNE: That's all I have. Thank you.

8 THE COURT: Redirect?

9 MR. WILKINSON: No. Thank you, Your Honor.

10 THE COURT: Any objection to this witness being
11 excused, by the government?

12 MR. WILKINSON: No, Your Honor.

13 THE COURT: By the defense?

14 MR. BROWNE: No, Your Honor.

15 THE COURT: Thank you, sir. You may step down.
16 You're excused.

17 Members of the jury, if you'd like to stand and stretch.

18 MR. CHUN: The United States calls Bob Kerr.

19 THE COURT: Please step forward, sir, all the way to
20 the front.

21 THE CLERK: Please raise your right hand.

22 BOB KERR, having been duly sworn, was examined and
23 testified as follows:

24 THE CLERK: Have a seat.

25 If you'd please state your first and last names, and spell

KERR - Direct (by Mr. Chun)

1 your last name for the record.

2 THE WITNESS: My name is Bob Kerr, K-E-R-R.

3 THE COURT: You may inquire.

4 MR. CHUN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. CHUN

7 Q Good morning, Mr. Kerr.

8 A Good morning.

9 Q Could you please tell the jury where you work?

10 A I am the chief financial officer and one of the owners of
11 Grand Central Bakery.

12 Q And where is Grand Central Baking located?

13 A Our headquarters are in Portland, Oregon, but we have
14 locations all over Seattle and Portland.

15 Q So somewhere in Seattle?

16 A Yes.

17 Q And how long have you worked there?

18 A Twenty-three years.

19 Q How did you start there?

20 A It's a family business. And one of my good friends was
21 part of the family, and I started off as the, kind of, numbers
22 and technology person.

23 Q And drawing your attention to late 2010, early 2011, was
24 your business the victim of computer hacking?

25 A Yes.

KERR - Direct (by Mr. Chun)

1 Q And how did you learn about that?

2 A Well, I was in Portland. Rosemary Kennedy was in charge
3 of our cash register POS system back then. She called me and
4 said the police had called her and -- either they had called or
5 come by. I can't remember which -- and that we'd been
6 identified as a source for credit card fraud. And so at that
7 point, I got involved in the whole process.

8 Q Okay. And so at that point, you became more involved?

9 A Yes. I mean, she was handling kind of -- I handled the
10 Portland -- at that time, five years ago, I handled the
11 Portland POS system. She handled the Seattle. So I kind of
12 got involved as a support for her.

13 Q And do you remember who contacted you from law
14 enforcement?

15 A I believe it was David Dunn. It was -- at the time, I
16 wasn't quite sure if it was Seattle Police or Secret Service or
17 both. I still don't really know.

18 Q But you recall the name David Dunn --

19 A Yeah.

20 Q -- being either Seattle Police --

21 A I believe I even talked to him, yeah.

22 Q Or Secret Service?

23 A Yeah.

24 Q And back then, in late 2010, early 2011, what type of
25 point-of-sale system did you have?

KERR - Direct (by Mr. Chun)

1 A We used MICROS.

2 Q And did it accept credit cards?

3 A Yes.

4 Q And, I guess, specifically, which store was the victim of
5 the computer hacking?

6 A It was our Pioneer Square location, which is our first
7 location.

8 Q Here, in downtown Seattle?

9 A Yeah, downtown Seattle.

10 Q And how were the computer and point-of-sale systems set up
11 at that time?

12 A Well, at the front counter, we had two POS systems, which
13 are on the same network as the MICROS server, which lives in
14 the back office. And we were doing internet processing.

15 Q And back then, on a regular day, how many customers did
16 you see?

17 A About 500.

18 Q And what percentage of those would pay by credit card?

19 A Probably about four out of five.

20 Q About 80 percent?

21 A 80 percent.

22 Q And because of this incident, did you incur any costs from
23 it?

24 A Yes.

25 Q What types of costs?

KERR - Direct (by Mr. Chun)

1 A Well, first of all, the biggest cost was a fine we had to
2 pay Visa, for \$5,000. And then we had to -- we had to replace
3 our server. We ended up closing -- we ended up not taking
4 credit cards, immediately, for four days. Then we paid MICROS
5 to replace the server, to clean all our machines, you know,
6 wipe them, reinstall the operating systems. We also did that
7 to all our office computers. We had them taken away and
8 cleaned, so we had loaners. So we paid for that.

9 Q Do you remember the approximate amounts for these things?

10 A Yeah. Well, the Visa fee was \$5,000. The server was
11 about \$1,600. And we had to buy new dial-up credit card
12 machines, which I think were about \$800 apiece, for two of
13 them. The swat [sic], we paid our IT vendor to clean our
14 machines, I'm guessing, about \$600. I couldn't find the
15 receipt for that. I think I got everything. Of course, there
16 was a lot of my own time spent on the project, as well.

17 Q What do you mean by your own time?

18 A Well, coordinating all those things, you know, trying to
19 figure out what happened, coordinating all the different
20 vendors. Of course, we had to go through the whole PCI
21 compliance, talking to Bank of America, who was our processor
22 at the time. There was a lot of explaining and coordinating.

23 Q And did you have any change in business following the
24 incident?

25 A It's hard to say. I mean, definitely there were people

KERR - Direct (by Mr. Chun)

1 walking in the door with their credit card in their hand
2 saying, "Hey, can I buy something?"

3 MR. BROWNE: Objection, Your Honor.

4 THE COURT: It's sustained.

5 BY MR. CHUN

6 Q Without telling us what other people told you, did you
7 have any fallout in business?

8 A I can't say for sure. I mean, I don't have -- I don't
9 have the numbers to show that, because there are any kind of
10 number of variables that can affect sales in a week.

11 Q Was there any period of time where you didn't take credit
12 cards at all?

13 A Yes, for four days.

14 Q So you were cash-only for four days?

15 A Yeah.

16 Q But prior to that, about 80 percent of your customers used
17 credit cards?

18 MR. BROWNE: Your Honor, object to the leading
19 question.

20 THE COURT: It is leading, Counsel. Sustained.

21 MR. CHUN: No further questions, Your Honor.

22 THE COURT: Cross examination?

23 MR. BROWNE: No, I don't have any questions, sir.
24 Thank you very much.

25 THE WITNESS: Okay. Thank you.

KERR - Direct (by Mr. Chun)

1 THE COURT: Any objection to this witness being
2 excused, by the government?

3 MR. CHUN: No, Your Honor.

4 THE COURT: By the defense?

5 MR. BROWNE: No, Your Honor.

6 THE COURT: Thank you, sir. You may step down and be
7 excused.

8 Members of the jury, if you'd like to stretch, please feel
9 free to do so.

10 Next witness, Counsel?

11 MR. BARBOSA: The government calls Chris Forsythe.

12 THE COURT: Please step forward, sir, all the way to
13 the front.

14 THE CLERK: Please raise your right hand.

15 CHRISTOPHER FORSYTHE, having been duly sworn, was examined
16 and testified as follows:

17 THE CLERK: Have a seat.

18 If you could please state your first and last names, and
19 spell your last name for the record.

20 THE WITNESS: First name is Christopher. Last is
21 Forsythe, F-O-R-S-Y-T-H-E.

22 THE COURT: You may inquire.

23 MR. BARBOSA: Thank you, Your Honor.

24 ////

25 ////

FORSYTHE - Direct (by Mr. Barbosa)

1 DIRECT EXAMINATION

2 BY MR. BARBOSA

3 Q Good morning, Mr. Forsythe.

4 A Good morning.

5 Q Could you tell the jury where you work?

6 A I currently work at Visa.

7 Q How long have you been employed at Visa?

8 A Just over a year.

9 Q What's your job title there?

10 A I am a senior risk management analyst in the payment fraud
11 instruction team.

12 Q And where did you work before moving to Visa?

13 A I was at FIS Global.

14 Q How long were you there?

15 A I was there for about a year.

16 Q What did you do with FIS Global?

17 A My title was IT security analyst, and I handled
18 investigations into credit card fraud and other related
19 activities.

20 Q Where did you work before FIS Global?

21 A I was at BECU, Boeing Employees Credit Union.

22 Q How long were you employed by BECU?

23 A About six years.

24 Q What did you do at BECU?

25 A I investigated crimes of credit card fraud, counterfeit

FORSYTHE - Direct (by Mr. Barbosa)

1 cards, ATM skimming, ID theft, account takeovers, check
2 forgery, any loss to the credit union through fraud.

3 Q And did you work with law enforcement as part of that
4 work?

5 A Yes, I did.

6 Q Who did you work with primarily in law enforcement?

7 A I worked heavily with Detective Dave Dunn, of the Seattle
8 Police Department.

9 Q What was your job title there?

10 A I was a security risk specialist.

11 Q What is Boeing Employees Credit Union? What type of
12 credit union is it?

13 A We are a local credit union, based in Washington.

14 Q And who can become a member of that credit union?

15 A Anyone who lives, works, or worships in the state of
16 Washington, or is a Boeing employee.

17 Q Is BECU federally insured?

18 A Yes, it is.

19 Q Who are they federally insured by?

20 A NCUA.

21 Q Does Boeing Employees Credit Union issue credit cards to
22 their customers?

23 A Yes, we do.

24 Q What types of credit cards do they issue?

25 A They issue Visa credit cards.

FORSYTHE - Direct (by Mr. Barbosa)

1 Q Do they issue debit cards, also?

2 A Yes.

3 Q What types of debit cards?

4 A Those are under the MasterCard brand.

5 Q And what's the difference between those two types of cards
6 that were issued by BECU?

7 A The Visa credit cards can be used without a PIN, and
8 swiped. They're based off of a credit limit, of sorts. The
9 debit MasterCards are tied to a checking account, and are
10 typically used at ATMs, with a PIN number.

11 Q Can the debit MasterCards also be used similar to a credit
12 card?

13 A Yes, they can be used without a PIN.

14 Q How could they be used in that way?

15 A It's an accessibility option that the -- just the
16 requirements that allowed that certain -- only certain
17 transactions, such as ATMs, or other -- if a merchant requires
18 it, there's a PIN. But you can go to the grocery store and use
19 it without a PIN, if the merchant doesn't need it, or if the --
20 if it's not required.

21 Q What type of data from a debit card is used to make a
22 non-PIN transaction?

23 A There's the credit card number and other name that's on
24 the data itself, and also track data, as we call it.

25 Q And where is that track data stored?

FORSYTHE - Direct (by Mr. Barbosa)

1 A That's stored on the magnetic stripe, on the back of the
2 card, on the black strip.

3 Q As part of your work with BECU, did you investigate
4 reports of unauthorized charges on your customers' credit and
5 debit cards?

6 A Yes, I did.

7 Q How did you typically learn about those unauthorized
8 charges?

9 A We will learn about those through various means, through
10 our fraud detection systems, where we would get reports of
11 transactions that our fraud monitoring company had detected; or
12 whether an account holder called in to BECU, letting us know
13 that they had fraud on the account. Those are the main ways we
14 determine fraud, or came across fraud.

15 Q What did you do when you received reports of unauthorized
16 charges?

17 A When we -- sorry. When we received reports of the fraud,
18 we went back through and analyzed the account holder's purchase
19 history, where they lived, the type of transactions they did,
20 to determine if we can find a common merchant where the account
holder had gone, where their data may have been stolen from.

22 Q And when you say a "common merchant," what would you be
23 comparing a particular cardholder's unauthorized charges with
24 in terms -- in order to find a commonality?

25 A We would be looking at a fraud pattern. So we may be

FORSYTHE - Direct (by Mr. Barbosa)

1 looking at where the card was used, like, for fraud, if they
2 were used in a particular state. We also would look at, if we
3 have several account holders that live in the same geographic
4 area, we might look at those closer, because they're within the
5 same particular region.

6 Q If unauthorized charges are made on a customer's debit or
7 credit card, who bears the loss from that transaction?

8 A In those cases, BECU bears the loss.

9 Q Why does BECU bear the loss on that?

10 A We do not have coverage for fraud losses.

11 Q And why doesn't the customer have to accept the fraud
12 losses?

13 A That is part of the Visa/MasterCard brands, the zero
14 liability. The cardholder does not take loss for fraud.

15 Q You mentioned trying to determine where the card was
16 compromised, and comparing to other accounts.

17 How do you go about determining that point of compromise?

18 A Typically, I will go into our transaction system, and I
19 will pull -- or download the account holder's card history for
20 particular time frames, so anywhere between a couple of days
21 upwards of six months, and review the account history. And
22 I'll do that for multiple account holders at the same time.

23 Q And what are you looking for?

24 A I'm looking for a common merchant that all of the account
25 holders may have used.

FORSYTHE - Direct (by Mr. Barbosa)

1 Q What might prompt you to begin conducting that type of
2 analysis, that common-point-of-compromise analysis?

3 A If we have an influx of fraud on multiple accounts, and we
4 notice that there's a tie, where the account holders use their
5 card and where they live, we'll look at that, as well, from a
6 pattern standpoint.

7 Q You mentioned working with law enforcement.

8 How often would you share this common-point-of-compromise
9 analysis with law enforcement?

10 A It would be on a regular basis.

11 Q Drawing your attention to October of 2010, did you report
12 a potential point-of-sale compromise at the Broadway Grill to
13 Seattle Detective David Dunn?

14 A Yes, I did.

15 Q What led you to make that report?

16 A We had received multiple reports of fraud on account
17 holders' cards. And we had done an analysis on the accounts
18 and determined that the account holders had all used Broadway
19 Grill.

20 Q What was the volume of fraud on the charges you were
21 seeing, that you believed were tracing back to Broadway Grill?

22 A I don't remember my initial number that I reported.

23 Q Was it out of the ordinary? Was this a typical case for
24 you?

25 A Yes, it was pretty typical, with the volume of fraud we'd

FORSYTHE - Direct (by Mr. Barbosa)

1 seen that there was a spike in activity, that we had seen.

2 Q What type of information did you provide to Detective
3 Dunn?

4 A We provided the name of the account holder, if we had a
5 release from the account holder; the transaction when the
6 account holder used the card at Broadway Grill; and also the
7 fraudulent transactions that the account holder had reported,
8 or were attempted.

9 Q Over the next several months following that compromise,
10 did Detective Dunn ask you to conduct any additional
11 common-point-of-compromise analysis?

12 A Yes.

13 Q Did you identify any additional merchants?

14 A We -- there was additional CPP that Detective David Dunn
15 had notified us of --

16 MS. SCANLAN: Objection. Hearsay.

17 BY MR. BARBOSA

18 Q The question I was asking was, did you identify any
19 additional points of compromise, based on the numbers Detective
20 Dunn provided you? Are you having trouble with --

21 A Not that I can recall.

22 Q As part of your work with BECU, what else did you do with
23 the information about fraud losses that you investigated?

24 A Once we had received a report of fraud on an account, we
25 reported those unauthorized transactions to either MasterCard

FORSYTHE - Direct (by Mr. Barbosa)

1 or Visa, through the systems that we had, to let them know
2 there was fraud.

3 Q Why did you do that?

4 A It was part of our agreements with the card brands, that
5 we let them know what fraud occurred on what card, report the
6 transactions to them.

7 Q Turning back to Broadway Grill, specifically, did
8 Detective Dunn ask you to provide loss information for credit
9 card numbers specific to that breach?

10 A Yes.

11 Q And how did you go about producing that information? What
12 was the source of the information, the loss information that
13 you provided to him?

14 A That information came from cardholder fraud reports that
15 we had received.

16 Q And are those fraud reports and information that you
17 received in the ordinary course of BECU's business?

18 A Yes, it is.

19 Q And is the information contained in those records entered
20 at or near the time of the events recorded?

21 A Yes, it is.

22 Q Did you rely on those records as part of your day-to-day
23 work at BECU?

24 A Yes, I did.

25 Q I'm going to show you what's been marked as Government's

FORSYTHE - Direct (by Mr. Barbosa)

1 Exhibit 15.17.

2 Do you recognize this?

3 A Yes, I do.

4 Q And did you review this in preparation for trial, again?

5 A Yes, I did.

6 Q And how do you recognize this?

7 A This appears to be a document that I prepared for
8 Detective David Dunn, containing unauthorized transactions that
9 occurred on an account holder. That was a MasterCard account.

10 MR. BARBOSA: Government offers Exhibit 15.17.

11 THE COURT: Any objection?

12 MS. SCANLAN: No objection.

13 THE COURT: 15.17 is admitted.

14 (Exhibit 15.17 was admitted)

15 BY MR. BARBOSA

16 Q So what does this record show us?

17 A This record shows us here that, on various dates in
18 October of 2014, this particular card in question, ending in
19 5719, had transactions attempted, and also successful, it
20 appears to be, in Canada.

21 Q And what was the name for that account?

22 A The name that we had on record was David Knoernschild.

23 Q What was the total amount of unauthorized charges you
24 found on Mr. Knoernschild's account?

25 A Based off the number here, off the bottom, was \$1,199.59.

FORSYTHE - Direct (by Mr. Barbosa)

1 Q Was this the only loss that you found related to the
2 Broadway Grill numbers that Detective Dunn provided you?

3 A No. We had several others.

4 Q Do you recall what the total was, for just the numbers
5 that Detective Dunn provided from Broadway Grill was?

6 A I believe -- from the numbers that I provided to Detective
7 Dave Dunn, I believe the loss that I had tallied was about
8 \$79,000, that was successful. And I believe there was an
9 attempt -- there were attempts at an amount of about \$88,000.

10 Q And did he provide you additional numbers, throughout the
11 course of his investigation, from other points of compromise;
12 do you recall?

13 A Not that I can recall.

14 MR. BARBOSA: No further questions, Your Honor.

15 THE COURT: Cross examination?

16 MS. SCANLAN: I have no questions, Your Honor.

17 THE COURT: Any objection to this witness being
18 excused, by the government? Counsel?

19 MR. BARBOSA: No, Your Honor.

20 THE COURT: Any objection to this witness being
21 excused, by the defense?

22 MS. SCANLAN: No, Your Honor.

23 THE COURT: Thank you, sir. You may step down.
24 You're excused.

25 Members of the jury, if you'd like to stand and stretch.

COLE - Direct (by Mr. Wilkinson)

1 Counsel, next witness?

2 MR. WILKINSON: The United States calls Diane Cole.

3 THE CLERK: Please come forward.

4 Please raise your right hand.

5 DIANE COLE, having been duly sworn, was examined and
6 testified as follows:

7 THE COURT: Please be seated.

8 THE CLERK: If you'd please state your first and last
9 names, and spell your last name for the record.

10 THE WITNESS: Diane Cole, C-O-L-E.

11 THE COURT: You may inquire.

12 DIRECT EXAMINATION

13 BY MR. WILKINSON

14 Q Good morning, Ms. Cole.

15 A Good morning.

16 Q Can you tell us where you're employed?

17 A I am employed at Casa Mia, in Yelm, Washington.

18 Q What is Casa Mia?

19 A Casa Mia is a family-owned Italian restaurant.

20 Q How long have you been employed at Casa Mia?

21 A Fourteen years.

22 Q And what is your job position there?

23 A I am the manager and part owner.

24 Q How long has Casa Mia been in business in Yelm?

25 A Fourteen years.

COLE - Direct (by Mr. Wilkinson)

1 Q And for those of us who don't know Yelm, where is Yelm?

2 A Close to Olympia.

3 Q How many employees does Casa Mia have?

4 A We have from 20 to 25.

5 Q And can you describe, generally, the clientele you serve?

6 A It's a family restaurant, so families.

7 Q Looking back to 2010, did Casa Mia accept payment by
8 credit card?

9 A We did.

10 Q And do you know about how many credit cards you'd process
11 in a typical day?

12 A We have about 100, 100 to 150.

13 Q And I take it you had a system for processing those cards?

14 A We did.

15 Q Is that a point-of-sale system?

16 A We do.

17 Q And what type of software did that system use?

18 A It's Firefly.

19 Q Did anyone on site at Casa Mia know how to do maintenance
20 on Firefly, or fix it, if something went wrong?

21 A Well, we hired somebody to put it in for us. They sold it
22 as super secure. And we have online, and we can call them for
23 support.

24 Q And so when you called them for support, would they come
25 to your restaurant to work on it, or would they do it remotely?

COLE - Direct (by Mr. Wilkinson)

A They came to the restaurant to install it, so they were there for a few days, actually, installing it. And then if we called, they could take control of it and do it on -- from their point.

Q And when you said a moment ago that you looked into it and thought it was "super secure," what do you mean by that?

A I mean, we -- when we were shopping for a point-of-sale, we went to restaurant shows, and looked at all of them, and chose that one based on the fact that it was -- secure was really important to us. So we spent a lot of time looking for that and paid a lot of money for it.

Q I want to turn, now, to February of 2011.

Did you learn, in that time period, that the system had been compromised?

A We did.

Q How did you learn?

A We learned that the -- two people had come in to take it out, and said that it had been compromised.

Q Okay. And were the people who came in, were they law enforcement officers?

A They were, yeah.

Q Do you remember who they were with?

A I wrote it down. They were -- well, the FBI -- I'm not sure exactly who he was with.

Q That's okay. It was a law enforcement agent?

COLE - Direct (by Mr. Wilkinson)

1 A It was law enforcement, yeah.

2 Q Did this event of the computer being compromised result in
3 any costs to your business?

4 A Yes, a lot of costs.

5 Q Was there an audit that was required?

6 A There was a forensic audit required, but we also pay for
7 an audit every year to remain safe, so we do that. But then we
8 had to pay \$7,000 to have a forensic audit, because we could no
9 longer use our credit card machine.

10 Q And was that something that someone required you to do,
11 the \$7,000?

12 A Yes.

13 Q Do you remember the name of the firm that conducted the
14 audit?

15 A SecurityMetrics.

16 Q Were you also required to pay any fines?

17 A We were. They took -- after we found out about it, the
18 next day, there was \$2,500 just taken out of our account.

19 Q And who had taken -- did you determine who had taken it?

20 A The processor, First Data.

21 Q Did that result in any immediate -- having that money
22 taken out of your account result in any immediate complications
23 to the business?

24 A Yes. We -- it was our payroll money, so we didn't have
25 the money for our payroll. That was part of it. And so we had

COLE - Cross (by Mr. Browne)

1 to use credit cards. And that was just the first fine. Then
2 there were more taken, also, after that, that they let us make
3 payments. They took \$500 a week after that. So I would say it
4 resulted in \$15- to \$20,000 worth of costs.

5 Q And in general, how would you describe the effect that all
6 of this had on your business?

7 A Well, we weren't really making money, at the time, so it
8 had to all go on credit cards. And it was a lot of stress.
9 And because -- and then customers found out, through a story
10 written on the newspaper, so that, of course, made them
11 nervous. So I have no idea how many people didn't come in
12 because of that.

13 MR. WILKINSON: No further questions for this
14 witness.

15 THE COURT: Cross examination?

16 MR. BROWNE: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. BROWNE

19 Q Good morning.

20 A Hi.

21 Q Just a couple questions.

22 A Okay.

23 Q So the Firefly system was not secure, obviously; right?

24 A Well, to our knowledge, it was secure.

25 Q Well -- I'm sorry. Go ahead. I don't want to interrupt

COLE - Cross (by Mr. Browne)

1 you. Finish your answer, please, if you want to.

2 A Yeah. To our knowledge, it was secure. At the time, we
3 had no idea if it wasn't.

4 Q Okay. But you paid fines, because your point-of-sale
5 system was not compliant, and that's why you got fined; right?

6 A As -- it was hard to really understand all of it, because
7 it was really hard to get anybody to exactly answer the
8 questions of why, but -- because we did pay every year for an
9 audit to make sure it was safe. So we took all the measures
10 that we knew to make it safe. So I'm not really sure,
11 actually, about that.

12 Q Well, who did you pay the fine to? Or who took the money
13 out of your account?

14 A First Data.

15 Q Sorry?

16 A First Data, our processor.

17 Q Okay.

18 A Yeah, the processor.

19 MR. BROWNE: That's all I have. Thank you.

20 THE COURT: Redirect?

21 MR. WILKINSON: No. Thank you, Your Honor.

22 THE COURT: Any objection to this witness being
23 excused, by the government?

24 MR. WILKINSON: No, Your Honor.

25 THE COURT: By the defense?

COLE - Cross (by Mr. Browne)

1 MR. BROWNE: No, Your Honor.

2 THE COURT: Thank you. You're excused. You may step
3 down.

4 We'll take our morning recess at this time.

5 (Jury exits the courtroom)

6 THE COURT: Counsel, anything to take up?

7 MR. WILKINSON: No, Your Honor.

8 THE COURT: Counsel for the defense?

9 MR. BROWNE: No, Your Honor.

10 THE COURT: We'll be on break.

11 (Recess)

12 (Jury enters the courtroom)

13 THE COURT: Counsel, your next witness?

14 MR. WILKINSON: The United States calls Mr. Joe
15 Angelastri.

16 THE COURT: Please have him step forward.

17 THE CLERK: Please raise your right hand.

18 JOE ANGELASTRI, having been duly sworn, was examined and
19 testified as follows:

20 THE CLERK: If you could please state your first and
21 last names, and spell your last name for the record.

22 THE WITNESS: Joe Angelastri, A-N-G-E-L-A-S-T-R-I.

23 THE COURT: You may inquire.

24 MR. WILKINSON: Thank you, Your Honor.

25 ///

ANGELASTRI - Direct (by Mr. Wilkinson)

1 DIRECT EXAMINATION

2 BY MR. WILKINSON

3 Q Good morning, sir.

4 A Good morning.

5 Q What do you do for a living?

6 A I own City News Stand, in Chicago.

7 Q What is City News Stand?

8 A It's a retail store. We sell newspapers and magazines;
9 two locations, one in the city and one in Evanston, Illinois.

10 Q How long have you been in the newspaper business?

11 A Since 1978.

12 Q And have you owned that same business the whole time?

13 A Yes, same business.

14 Q Turning to the period starting in about 2010, in what ways
15 were you accepting payments from your customers?

16 A We accepted credit cards and cash.

17 Q And about how many credit cards would you process a day?

18 A At each location, about a hundred.

19 Q Do you have a point-of-sale system to process them?

20 A Yes. We used a store point-of-sale system called SQUARE
21 ONE. We've been dealing with them since 1990.

22 Q And I take it the point-of-sale system had software that
23 made it run?

24 A Yes.

25 Q And if something went wrong with the software, did you

ANGELASTRI - Direct (by Mr. Wilkinson)

1 personally know how to do maintenance on it, fix it, upgrade
2 it, things like that?

3 A No. That type of stuff was all outsourced, so that the
4 company provided all the point-of-sale software for us and all
5 the maintenance with it.

6 Q And when they would do maintenance, would they come pay
7 your store a visit, or would they remotely access the computer?

8 A They would -- the point-of-sale software would be
9 remotely -- they would do it remotely. And then we had a local
10 company we used to work with the -- to maintain the PCs.

11 Q When you purchased the system, did you look into whether
12 it was secure?

13 A Well, way back when we purchased it, it was the
14 industry -- they were a large company -- I mean, a decent-sized
15 the company. They worked with IBM. And they did many
16 bookstores across the country, and there was never any problems
17 that we were aware of.

18 Q So did you feel comfortable that it was a secure system
19 you were working with?

20 A Yes.

21 Q At some point in time, did you learn that the system had
22 been compromised?

23 A Yes, we did learn, in 2010, that the -- that -- we got
24 some e-mails from our credit card processor, and they were
25 saying that we were a common point of --

ANGELASTRI - Direct (by Mr. Wilkinson)

1 MR. BROWNE: Excuse me, Your Honor. Hearsay.

2 THE COURT: It is hearsay, Counsel.

3 BY MR. WILKINSON

4 Q Did you understand, after that conversation, that your
5 system had been compromised?

6 A Yes.

7 Q Did you meet with members of law enforcement, police
8 officers, or people like that, to deal with it?

9 A Yeah, it all happened fairly quickly. First, we had to
10 identify that there was a problem. So when the credit card
11 processor insisted on us doing an audit, they came right away,
12 the next day. And they said it was definitely something going
13 on, and that there was fraud involved, and we should make
14 police reports. So we did made police reports in Chicago and
15 Evanston.

16 MR. BROWNE: It's hearsay.

17 THE COURT: It is hearsay, Counsel. Sustained.

18 MR. WILKINSON: I'll withdraw the question.

19 THE COURT: Just a second.

20 Members of the jury, disregard the response provided by
21 the witness to the extent he was relying on information told to
22 him by another individual.

23 Next question, Counsel?

24 BY MR. WILKINSON

25 Q What steps did you take to respond after -- aside from

ANGELASTRI - Direct (by Mr. Wilkinson)

1 filing the police report, what did you do?

2 A Well, first, we had the audit, and then we read all the
3 details in the audit. And then they said, in order to continue
4 keep processing credit cards, we had to do certain steps. One
5 was put in a firewall, and do a monthly scan. And there was a
6 few other minor things, but we followed that. And we gave it
7 to our contractors to also help us make sure we complied.

8 Q You mentioned the audit. I take it a third -- another
9 company was hired to do that audit?

10 A Yes. We hired Trustwave. They gave us a list of three or
11 four companies, and we chose that one.

12 Q Who paid for the audit?

13 A I had to pay -- our business paid. We had to pay for an
14 audit for both locations. So it was just a little under
15 \$10,000 for each audit.

16 Q So what was the total cost you paid for the audits?

17 A Total cost was \$19,000.

18 Q Were you also fined?

19 A We were told we were going to be fined, but we didn't
20 actually get a fine. The Global Payments, which was the bigger
21 processor, had another company involved, and somehow we were
22 never fined.

23 Q Did you have -- at the time you had to pay the \$19,000,
24 did you have that kind of money available in your business
25 account to pay it?

ANGELASTRI - Direct (by Mr. Wilkinson)

A No, I didn't, so we had to use our line of credit. And we still actually owe money on that. So it's taking quite a while to pay that down.

Q Were there any other ways in which this incident affected your business?

A I'm sure when it happened it took quite a bit of my time to try to make this work again, try to get everything back together. We had to -- we no longer process the credit cards on point-of-sale. It was too big of a risk for it to happen again. So we use the small, old-fashioned devices, and telephone lines, just to make it a hundred percent secure, because it was too big of a hit for us to happen again.

MR. WILKINSON: No further questions for this witness.

THE COURT: Cross examination?

MR. BROWNE: No questions, Your Honor.

Thank you, sir.

THE COURT: Any objection to this witness being excused, by the government?

MR. WILKINSON: No, Your Honor.

THE COURT: By the defense? Mr. Browne?

MR. BROWNE: No.

THE COURT: Thank you, sir. You may step down. You're excused.

Next witness, Counsel?

WOOD - Direct (by Mr. Barbosa)

1 MR. BARBOSA: The government calls Megan Wood.

2 THE CLERK: Please raise your right hand.

3 MEGAN WOOD, having been duly sworn, was examined and
4 testified as follows:

5 THE CLERK: Have a seat.

6 If you could please state your first and last names, and
7 spell your last name for the record.

8 THE WITNESS: Megan Wood, W-O-O-D.

9 THE COURT: You may inquire.

10 DIRECT EXAMINATION

11 BY MR. BARBOSA

12 Q Good morning, Ms. Wood.

13 Could you please tell the jury where you're employed?

14 A I'm employed with the U.S. Secret Service, Seattle Field
15 Office.

16 Q And what are your duties with the Seattle Field Office?

17 A I'm the investigative analyst, so I provide analytical
18 support for financial crime investigations. So I do financial
19 analysis, database research, investigative research, call
20 analysis, phone record analysis, and other, like, visual aids.

21 Q How long have you been with the Secret Service?

22 A For eight years.

23 Q And have you been employed in Seattle the whole time?

24 A No. I've been in Seattle for three-and-a-half years.

25 Q Where were you before that?

WOOD - Direct (by Mr. Barbosa)

1 A D.C.

2 Q What did you do in D.C.?

3 A I started as an investigative records technician. I did
4 that for two years, in our Criminal Investigative Division, and
5 then I transferred to our Investigative Support Division. And
6 I was an investigative analyst there for about three years.

7 Q What type of training have you received to become an
8 investigative analyst?

9 A I've taken multiple trainings, financial records
10 examination and analysis. I attend annual analyst seminars,
11 where we go over tools and software and things like that. I've
12 taken money laundering, mortgage fraud seminars, intel analysis
13 trainings.

14 Q Have you also received on-the-job training?

15 A Yes.

16 Q What types of things have you learned in your day-to-day,
17 on-the-job work?

18 A Well, I -- when we start as an analyst, we're given a
19 mentor. So I kind of learned on the job in that sense, so any
20 kind of financial crime cases I'm working. It really depends
21 on the case.

22 Q What types of financial analysis do you do as an
23 investigative analyst?

24 A Again, it depends on the case. Sometimes it involves
25 taking raw data, like bank records, and putting them into a

WOOD - Direct (by Mr. Barbosa)

1 useable format, like Excel, in order to analyze it. When I'm
2 working credit card fraud cases or check fraud cases, a lot of
3 it involves reaching out to the banks to gather loss
4 information and calculate fraud loss totals.

5 Q Do you also work with the credit card brands in that
6 regard?

7 A Yes.

8 Q How often do you work with the credit card brands in that
9 regard?

10 A I've worked with the brands for, I would say, five to ten
11 cases.

12 Q What tools do you use in your work as an investigative
13 analyst?

14 A Well, we have -- as far as financial analysis goes, mostly
15 Microsoft Excel and Access. We also have a software called
16 Financial Investigative Software that analyzes bank records,
17 that kind of stuff.

18 Q Did you participate in the analysis of evidence recovered
19 during the investigation of Roman Seleznov?

20 A Yes, I did.

21 Q Who did you work with on that investigation?

22 A I worked with Special Agent Dave Mills and Special Agent
23 Mike Fischlin, as well as Detective Dave Dunn.

24 Q When did you first begin working on this Roman Seleznov
25 investigation?

WOOD - Direct (by Mr. Barbosa)

1 A I initially started working back in 2012.

2 Q And what type of analysis were you asked to perform as
3 part of this case?

4 A Mostly, the agents and investigators would provide me with
5 card numbers that were located on multiple sources, and I would
6 send those card numbers out to the card brands and request
7 fraud loss information.

8 Q What type of fraud loss information were you requesting?

9 A Any kind of fraudulent transactions that were associated
10 or reported for those cards.

11 Q As part of that work, what type of records did you receive
12 back and review?

13 A Mostly, they were spreadsheets. And they'd include the
14 name of the financial institution, the card number, merchant
15 information, transaction information, like the date of the
16 transaction, as well as some of the card brands also included
17 customer information.

18 Q Moving back, what was the source of the credit card
19 numbers for which you sought loss records?

20 A They came from various servers, as well as a laptop
21 computer.

22 Q Do you recall which servers and laptop computer?

23 A Yes. It was the HopOne server, the Ukrainian server, 2Pac
24 server, as well as a system recovered from Red Pepper Pizzeria
25 and Broadway Grill. And I believe it was the defendant's

WOOD - Direct (by Mr. Barbosa)

1 laptop.

2 Q What credit card brands did you contact in order to
3 request loss information?

4 A It was Visa, MasterCard, American Express, and Discover.

5 Q And why did you ask the card brands for records, instead
6 of going straight to each issuing bank?

7 A Well, there were a large volume of card numbers. And so
8 it wouldn't be realistic to reach out to the banks, because
9 there were thousands and thousands of banks. So it's easier to
10 go through the card brands.

11 Q How did you go about requesting the information from the
12 credit card brands?

13 A Usually, I would just e-mail them to find out what the
14 procedure is, as far as requesting loss on card numbers.

15 Q And how did you -- did you then send them the numbers?

16 A Yes. So I would send them the list of card numbers.

17 Q I'd like to talk about the type of information and how
18 that information was provided to you.

19 What did you receive, not going into specifics, but what
20 was the nature of the data you received back from the card
21 brands?

22 A They were usually in spreadsheets with raw transactional
23 data.

24 Q And what was the volume of the transactional data you were
25 receiving back from the card brands?

WOOD - Direct (by Mr. Barbosa)

1 A It was over a million or so records, total.

2 Q Did the card brands provide information on each individual
3 unauthorized charge on each account for which they had records?

4 A Most of them did, yes, I believe.

5 Q How -- if they didn't, what type of information would you
6 receive?

7 A If they didn't, I believe some of them may have just
8 provided the card number and the total amount of fraud,
9 possibly. But I believe most of them had the individual
10 transactions.

11 Q Did you receive all of the records at once?

12 A No.

13 Q Over what time period were the records from the card
14 brands received?

15 A They were, I guess -- initially, back in 2012, there were
16 some results that we received from Visa and MasterCard and
17 AmEx. And then the additional data was between 2014 and 2016.

18 Q How many credit card numbers, total, did you ask the card
19 brands to provide records for?

20 A There were around 2.9 million unique card numbers.

21 Q When the records came back, did some of the card numbers
22 have records of multiple unauthorized charges?

23 A Yes.

24 Q In total, across all four card brands, approximately how
25 many lines of data did the records you received back from the

WOOD - Direct (by Mr. Barbosa)

1 card brands total up?

2 A Over a million.

3 Q After you received all these records, did you review the
4 information to determine the total amount of losses?

5 A Yes. I compiled all the data together to do that.

6 Q How did you go about compiling all the data together?

7 A Well, I created a template in Excel so that there would be
8 a consistent, uniform format to move the data into so I could
9 perform analysis. So basically, as I would receive results, I
10 would transfer the data into my template that I created, and
11 then totaled it that way.

12 Q Did you use -- was Excel the only tool you used?

13 A No. I used Excel, initially, and then I ended up
14 eventually moving it into Access, because it was so large. And
15 Access also allows you to cross-reference data and do a little
16 bit more analysis.

17 Q Did you use pivot tables?

18 A Yes.

19 Q What are pivot tables?

20 A Pivot tables are an Excel functionality. So when you have
21 a large volume of data, it allows you to condense it so that it
22 is easier to understand.

23 Q And what did you use pivot tables for?

24 A I used it to summarize the amount of fraud loss per
25 financial institution. So each of those banks listed would

WOOD - Direct (by Mr. Barbosa)

1 make up multiple transactions and card numbers.

2 Q You mentioned at one point you moved from Excel to Access.

3 Why was that?

4 A Because it was so -- it was such a large volume. Excel, I
5 think, only allows just about a million records, and it went
6 over that threshold, so it was just easier to work with the
7 data in Access. Access can handle a larger volume of data.

8 Q Okay. What type of information did you move into the
9 Access database from the underlying records?

10 A The names of the financial institution, the card numbers,
11 the amount of fraud, and the source of fraud, as well as notes
12 that I made.

13 Q What type of notes did you keep?

14 A Well, I kept notes for anything -- when I was
15 cross-referencing the data, if I found any duplicates, or
16 something that I thought should have been removed, I would just
17 make note of it.

18 Q Did you have to do any additional research beyond what the
19 credit card brands provided in order to fill in the identifying
20 information for issuing banks?

21 A Yes. There were -- a couple of the responses were
22 received that didn't include the bank names, so I did a BIN
23 search to identify the issuing bank.

24 Q What is a "BIN search"?

25 A A BIN search -- so BINs are the first six digits, usually,

WOOD - Direct (by Mr. Barbosa)

1 of a credit card number, and that's what tells you what issuing
2 bank issued the card.

3 Q And is that publicly available information?

4 A Yes.

5 Q Did you review the records from the card brands to make
6 sure none of the records they provided were for numbers that
7 didn't match up with your sources of credit card numbers, the
8 servers you identified and other computers?

9 A Yes.

10 Q How did you go about doing that?

11 A I used Microsoft Access, and I would run queries. When I
12 received the responses from the banks, I would run them across
13 the original sources that I knew they were supposed to have
14 come from to make sure that they all -- that they would all
15 match up.

16 Q What did you do if you found numbers that didn't come back
17 to one of the original evidence items?

18 A I removed them.

19 Q Why did the card brands provide loss records for cards
20 that weren't on one of the original sources of evidence?

21 A My understanding is, Detective Dunn, when he was initially
22 working this case, found --

23 MS. SCANLAN: Objection. This is based on hearsay.

24 THE COURT: That's sustained, Counsel.

25 ////

WOOD - Direct (by Mr. Barbosa)

1 BY MR. BARBOSA

2 Q Did you ask the card brands, at any point during this
3 case, to provide information on common points of compromise?

4 A I'm sorry. Can you repeat the question?

5 Q Did you ask the card brands, at any point, to provide
6 additional losses related, not specifically to card numbers on
7 the servers or computers, but to just the merchants that they
8 had identified as being breached?

9 A I did not, but I understand that that's what happened --

10 MS. SCANLAN: Objection.

11 THE COURT: That's sustained.

12 BY MR. BARBOSA

13 Q Did you include any losses in your summary that were not
14 tied directly to numbers found on one of the original sources
15 of evidence?

16 A No. They're not included in the summary.

17 Q Did you find any instances in which the card brands
18 provided duplicate loss records?

19 A Yes. There were some instances of that.

20 Q What did you do when you found duplication of the same
21 card number loss?

22 A Those were removed, as well.

23 Q So after you sorted all the data from the card brands, did
24 you create exhibits to summarize the data received from them?

25 A Yes.

WOOD - Direct (by Mr. Barbosa)

1 Q Can you take a look at Exhibit 16.6? And actually, I
2 should probably have you look at the original.

3 MR. BARBOSA: Thank you, Ms. Erickson.

4 BY MR. BARBOSA

5 Q This is an 88-page exhibit. Have you had a chance to
6 review that in your preparation for trial?

7 A Yes. I created it.

8 Q Does that accurately summarize all of the data that you
9 analyzed using Excel and Access and your other tools?

10 A Yes, it is.

11 Q How did you go about verifying the accuracy of the summary
12 in Exhibit 16.6?

13 A Well, I guess it goes back to the initial start of me
14 doing my analysis. I made sure I cross-referenced everything
15 and made sure everything could be verified back to a source and
16 there was no duplication. And this exhibit summarizes that.

17 Q Do your tools electronically calculate these numbers, or
18 do you hand calculate the totals?

19 A No. Excel would sum up -- or Access would sum up the
20 total.

21 MR. BARBOSA: The government offers 16.6.

22 MS. SCANLAN: Same objection as previously
23 articulated.

24 THE COURT: Based upon the Court's prior
25 determination, the objection is overruled.

WOOD - Direct (by Mr. Barbosa)

1 16.6 is admitted.

(Exhibit 16.6 was admitted)

3 BY MR. BARBOSA

4 Q Turning to the first page of Exhibit 16.6, can you explain
5 what information is summarized here?

6 A Yes. So it lists the name of the financial institution
7 and then the total amount of fraud loss that was reported from
8 that institution.

9 Q For each line in this summary, Exhibit 16.6, what are the
10 underlying records you reviewed from the credit card brands?

11 A The underlying records would be the transactional
12 information, all the fraudulent transaction information; so
13 card numbers, merchant information, and amounts.

14 Q So how many lines -- let me turn to Page 19, Line 794.
15 Do you see the entry for Chase Bank, JPMorgan?

16 A Yes.

17 Q Using that as an example, what would the volume of
18 underlying records be for this entry for \$15,110,556?

19 A So that would recommend multiple card numbers and multiple
20 transactions, thousands, probably.

21 Q Moving to the last page of Exhibit 16.6, how many total
22 banks were involved in your summary?

23 A Over 3,700.

24 Q Moving to Page 3, was Alaska Federal Credit Union one of
25 those? Do you see that on the highlighted section?

WOOD - Direct (by Mr. Barbosa)

1 A Yes, they were.

2 Q What was their loss?

3 A \$47,781.93.

4 Q Turning to Page 14, Line 586, do you see Boeing Employees
5 Credit Union?

6 A Yes.

7 Q What was their total loss that you had records for?

8 A \$355,504.52.

9 Q Turning to Page 55, we're going to go down to Line 2332,
10 was Navy Federal Credit Union one of the credit unions that had
11 losses related to the numbers you reported?

12 A Yes.

13 Q What was their loss?

14 A \$4,063,455.64.

15 Q Did you find a number of national banks, also, that had
16 losses reported?

17 A Yes.

18 Q Turning to Page 20, Line 828, do you see Citibank there?

19 A Yes.

20 Q What was their loss?

21 A \$10,846,467.93.

22 Q What was the total loss for all of the 3,700-plus banks?

23 A It was \$169,418,843.54.

24 MR. BARBOSA: No further questions, Your Honor.

25 THE COURT: Cross examination?

WOOD - Cross (by Ms. Scanlan)

CROSS EXAMINATION

BY MS. SCANLAN

Q Good morning.

A Good morning.

Q Okay. Let's talk about the underlying -- I just hit something -- let's talk about the underlying records for your summary; okay?

A Okay.

Q You received lists of credit card numbers from Detective Dunn; correct?

A Yes.

Q And then also, perhaps, from Agent Mills and Agent Fischlin?

A Yes.

Q You submitted those credit card numbers to the card issuers?

A To the card brands and the issuers. I mean, AmEx and Discover are the issuers, as well.

Q So when we're saying that, we're talking about AmEx, Discover, Visa, and MasterCard?

A Yes.

Q So you submitted the records to the four of them; correct?

A Correct

Q And then they provided you back with fraudulent transactions for those account numbers

WOOD - Cross (by Ms. Scanlan)

1 A Correct.

2 Q And what limitations did you tell them regarding the time
3 frame?

4 A Well, it depended on the card numbers that were provided
5 to me, but I would always ask the agents what the time frame is
6 for the fraud.

7 Q Okay. So what's the time frame for the losses, for
8 example, for -- how about the last one, Zions First National
9 Bank? All these losses, what's the time frame and the source
10 of this?

11 A I would have to look back at my records to give the
12 definite time frame.

13 Q Do you know what the source of this information is?

14 A The source of the information, it would have came from
15 Visa, MasterCard, Discover, or American Express --

16 Q How about -- I'm sorry. Are you done?

17 A Uh-huh.

18 Q How about the source of the fraudulent transaction records
19 for this financial institution, where did that come from?

20 A From their internal -- the source -- I'm sorry.

21 Can you repeat the question?

22 Q Yeah. So the records you initially get from law
23 enforcement, for this financial institution, Zions, where did
24 those come from; do you know?

25 A The Zions -- if it came from Visa or MasterCard, Zions

WOOD - Cross (by Ms. Scanlan)

would have reported that fraud directly to them.

Q So other way. So let me make sure I'm being fair; okay?

You submitted a group of credit card account numbers to these four card-issuing entities; correct?

A Correct.

Q So for this loss for this financial institution, that's approximately \$42-, \$43,000, the credit card numbers that you submitted to get this figure for Zions, where did they come from?

A Oh, where did the card numbers come from that I submitted to them?

Q Correct.

A They would have came from one of the various sources that I mentioned, so either one of the servers or the laptop computer.

Q Do you know which one?

A I don't. I don't know which one for that exact. I'd have to go back into my records to say which one.

Q Is that the same answer for all of these? So if I ask you about the first one, so 121 Financial Credit Union, this loss amount, \$4,161, can you tell us where we're getting this from? So where's the credit card numbers coming from that support this amount?

A Yes, I could, if I had my master -- I have a master database which lists every card number with loss, as well as

WOOD - Cross (by Ms. Scanlan)

1 the source it came from.

2 Q But while we're looking at this, in terms of helping us
3 figure this out, you don't know; is that right?

4 A No, I can't say for sure.

5 Q Okay. So for the credit card numbers that, for instance,
6 were taken from databases you understand were at Red Pepper
7 Pizzeria, at some point -- are we on the same page?

8 A Yes.

9 Q What are the parameters that you gave the card issuers
10 regarding fraudulent transactions for those account numbers?

11 A I would -- the parameters for what kind of data I was
12 requesting back?

13 Q Yeah. So, for instance, you can have a credit card that's
14 used at Red Pepper Pizzeria, right, and then it can have
15 fraudulent transactions coming from any number of sources.

16 So what did you do to limit it to fraudulent transactions
17 that would be associated with that breach?

18 A Well, I mean, I was provided card numbers that were
19 associated with the Red Pepper Pizzeria breach. I would submit
20 that to the card brands and request any fraudulent transaction
21 information for those card numbers during a certain time frame.

22 Q For what time frame?

23 A I would have to look back in my records. Like I said,
24 cards were coming from so many different sources, I had
25 different time frames for different card numbers.

WOOD - Cross (by Ms. Scanlan)

1 Q So for the transactions that you submitted for Red Pepper
2 Pizzeria, for instance, there could be fraudulent transactions
3 in there that the source of that is not this breach; right?
4 There could be John Doe's credit card number, that somebody
5 took his credit card and did a fraudulent transaction, that has
6 nothing to do with that. You wouldn't know; right?

7 A Potentially, yes.

8 Q So what did you do to avoid having that sort of thing
9 happen, where there's a fraudulent transaction that's being
10 attributed here that really has nothing to do with this? What
11 were the steps taken to avoid that?

12 A Well, I know a lot of the card brands, they can do their
13 own analysis to see where the common point of compromise was.

14 Q Sure. But what did you do to avoid that? You gave them
15 credit card numbers, asked for information, they gave you
16 information back.

17 What did you do to make sure that that's the information
18 that goes with this breach?

19 A I didn't specifically verify that.

20 Q You indicated that some of the card issuers sent you back
21 individual account records; is that correct?

22 A Yes.

23 Q And some of them did not?

24 A Well, I believe they all did. I'd have to look back,
25 again, at my records. But most of them provided individual

WOOD - Cross (by Ms. Scanlan)

1 transactional information for each card number.

2 Q Did you verify that those transactions were fraudulent,
3 with the account holders?

4 A No, I did not.

5 Q And in terms of these -- all these financial institutions
6 that are listed here, right, you indicated that some of this
7 information regarding which institution it is you got all off
8 these records that tell you what string of BIN numbers go with
9 what financial institution; right?

10 A Correct.

11 Q Did you request records from all of these places to verify
12 that you had the correct amounts for each of these financial
13 institutions?

14 A Did I reach out to the individual banks to verify?

15 Q Correct.

16 A No.

17 Q Okay. So these -- just so I understand, so all of these
18 financial institutions, these 3,715, you have not verified with
19 them that this is the right amount for their loss; right?

20 A No. I'm going off what the card brands were reported from
21 them.

22 Q But you didn't check with them to see if that's correct?

23 A No.

24 MS. SCANLAN: May I have one moment, Your Honor?

25 THE COURT: You may.

WOOD - Re-Cross (by Ms. Scanlan)

1 MS. SCANLAN: Thank you. I have nothing further.

2 Thank you.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY MR. BARBOSA

6 Q So why didn't you call all 2.9 million cardholders?

7 A Well, that's not a very realistic thing to do.

8 Q What about the 3,700 banks, slightly smaller number?

9 A Again, yeah, not enough time in the day.

10 MR. BARBOSA: No further questions, Your Honor.

11 RE-CROSS EXAMINATION

12 BY MS. SCANLAN

13 Q How long have you been assigned to this case?

14 A I initially started working it in 2012, so four years or
15 so.

16 Q The last four years?

17 A Uh-huh.

18 Q Okay. So over the last four years, it wasn't realistic
19 for you to check this information before you came up with this
20 \$170 million loss total?

21 A Well, no, because a lot of the data I just received a few
22 months ago. Like another 50 million or so, I just received a
23 few months ago. So, no, I wasn't able to verify all that.

24 Q But what about the stuff you received in 2012, did you
25 verify that?

WOOD - Re-Cross (by Ms. Scanlan)

1 A No, because we were going off data provided from the card
2 brands.

3 MS. SCANLAN: Okay. I have nothing further.

4 THE COURT: Further redirect?

5 MR. BARBOSA: No, Your Honor. Thank you.

6 THE COURT: Any objection to this witness being
7 excused?

8 MR. BARBOSA: No, Your Honor.

9 THE COURT: By the defense?

10 MS. SCANLAN: No, Your Honor.

11 THE COURT: Thank you. You may step down. You're
12 excused.

13 Counsel for the government, you previously indicated to
14 the Court that upon completion of the witnesses who will
15 testify this morning, the next witness availability would not
16 be until tomorrow morning; is that correct?

17 MR. BARBOSA: That's correct, Your Honor. I
18 apologize.

19 THE COURT: And the witnesses, according to -- my
20 records indicate that there are three witnesses remaining to
21 testify; is that correct, Counsel?

22 MR. BARBOSA: Yes, Your Honor.

23 THE COURT: And the government's expected to rest
24 sometime tomorrow before noon; is that correct?

25 MR. BARBOSA: Absolutely. I think our last three

witnesses will be quite short.

THE COURT: Okay. Ladies and gentlemen of the jury, the Court's going to give you another gift, and that means that you get to go home now, or go and do whatever you want. You don't have to go home. It's not an order of the Court.

But I do appreciate you coming in this morning. The government has given the Court the current update. We're still on track to be exactly what I represented to you last Friday, to finish the government's part of the case by tomorrow, and then we'll continue with the case from there.

And I believe the defense is calling one witness; is that correct, Counsel?

MR. BROWNE: Yes, Your Honor.

THE COURT: So that gives you the most current update that I have.

What we'll also need to do is finalize jury instructions. We're feverishly working on that right now, as we speak. And as soon as that's completed, then we'll be doing jury instructions, closing argument, and then you'll begin your formal deliberations. So that's my projection of what's left for the balance of the trial. We're on track.

And have a great day. See you all tomorrow morning, at
9:00 a.m.

(Jury exits the courtroom)

THE COURT: Counsel for the government, have you

1 checked on the availability, and can you represent to the Court
2 that the -- even the injured juror -- strike that -- injured
3 witness will be available tomorrow morning?

4 MR. BARBOSA: The injured witness, I need to check in
5 with him again. If he's not available tomorrow, we will go
6 without him. I don't want to delay things any further, if he
7 is unable to travel. But I'm going to check in with him as
8 soon as we --

9 THE COURT: And how far would he have to travel?

10 MR. BARBOSA: He's only coming from Ocean Shores.
11 And I'm going to offer as many options as we can. I haven't
12 told the agent, but I may be sending him to go pick him up, if
13 that might help.

14 THE COURT: And counsel for the defense, is your
15 witness local, or is he coming from out of town?

16 MR. BROWNE: Mt. Vernon.

17 THE COURT: Any difficulty with your witness being
18 here tomorrow afternoon, or at least in the morning session?

19 MS. SCANLAN: I have him scheduled to be here at
20 11:00. If he needs to be here before that, I can talk to him.
21 But that's what time he's planning on being here.

22 MR. BARBOSA: I think probably earlier, even if we
23 had everybody. Just victim testimony, as we've seen this
24 morning, it takes approximately 15 minutes each. And we have
25 three.

1 MS. SCANLAN: He can probably be here. I'll have him
2 come at 9:00.

3 THE COURT: That's perfect.

4 Anything else to take up?

5 MR. BARBOSA: No. Thank you for your patience, Your
6 Honor.

7 THE COURT: All right. Counsel, just so that you
8 know before you leave, we're working on the jury instructions.
9 If we get the packet finished today, we'll e-mail them to you
10 as quickly as possible, so that you should expect them sometime
11 today, hopefully. I just wanted to give you an update where we
12 are.

13 Have a good day.

14 (Adjourned)

15 (End of requested transcript)

16 * * *

17 I certify that the foregoing is a correct transcript from
18 the record of proceedings in the above matter.

19 Date: 8/22/16

20 /s/ Andrea Ramirez

21

22 _____
23 Signature of Court Reporter

24

25